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C O N F I D E N T I A L SECTION 01 OF 02 CARACAS 000770

SIPDIS

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SUBJECT: VENEZUELA: PATENT PROTECTIONS THREATENED

REF: 2008 CARACAS 1427

Classified By: Economic Counselor Darnall Steuart for reasons
1.4 (b) and (d).

1. (SBU) Summary. On June 14, President Chavez ordered a review of the country's legal protection of patents. Two days later, the Venezuelan government announced that the "technical information" relating to patents granted in the past by the Venezuelan government would soon be posted on the Internet. Although such action has yet to be taken, the IPR legal community in Venezuela is seriously concerned about a further erosion of intellectual property rights in Venezuela and it questions the constitutionality of this measure.

BRV Further Undermines Patent Protection

2. (SBU) On June 14, during his weekly "Hello, President" program, President Chavez ordered his Cabinet ministers, led by Minister of Commerce Eduardo Saman, to study the issue of patents, with an eye towards breaking the "privatization of knowledge" held by national and international companies. Chavez's directive followed a discussion of dairy product packaging process with employees of a state-owned dairy company, Los Andes, and Jesse Chacon, the Venezuelan Minister of Science, Technology and Intermediate Industries. In this discussion, Chacon had explained that Los Andes uses Tetra-Paks for the packaging of juices and long-life dairy products. According to Chacon, the Swedish conglomerate Tetra-Pak's proprietary technology is covered by a patent, which substantially elevates Los Andes' production costs.

3. (C) On June 16, Arlene Pinate, general director of SAPI (the Venezuelan government agency responsible for intellectual property protection) announced that SAPI would soon begin posting on the Internet "technical information" related to patents granted by Venezuela so that all those wishing to make use of them would be able to do. As of June 22, SAPI had not posted patent technical information on its website. According to IPR expert Madgaly Sanchez (protect throughout) of the law firm Hoet & Associates, Saman, the former director of SAPI, continues his hard-line stance against patents. (Note: Venezuela has not issued a medical patent since 2003.) Last week, according to Sanchez, Saman installed Andrea Coa in a senior position at SAPI. Coa proposed a new patent law in 2007, which was not enacted, and is a contributor to www.rebellion.org, a pro-socialism website. She recently posted on this site an article highly critical of patents and IPR. Contacts expect Coa to do Saman's bidding, saying that Coa has stated she "is on a special mission for Eduardo Saman."

An Increasingly Worried IPR Legal Community

¶4. (C) The IPR legal community, Sanchez said, is seriously concerned about the patent situation in Venezuela. Since the September 2008 resurrection of the 1955 Law which expressly prohibits intellectual property rights for pharmaceuticals and other products (reftel), experts have considered the Venezuelan IPR legal framework fragile at best. The return to the 1955 law codified Venezuela's de facto policy of refusal to issue patents, particularly in the area of medicines and put Venezuela at odds with its obligations to the World Trade Organization, the Paris Convention for the Protection of Industrial Property and Mercosur standards. There is great uncertainty of how patents will be handled in the future. Legal experts view the move by SAPI as unconstitutional as it directly contradicts existing IPR legislation, which had been implemented under the Andean Community framework. A motion by the Venezuelan Association of Intellectual Property Agents (COVAPI) to void the 2008 return to the 1955 law remains pending before the Supreme Court. The Venezuelan National Assembly is not currently considering any legislation that would change existing IPR law.

Comment

¶5. (C) With the judicial system squarely in Chavez's pocket, Post doubts any legal filings to block this latest action will be successful. Of course, once the technical information is posted on SAPI's website it will be available worldwide. However, questions remain if the Venezuelans have

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the technical expertise to use this information to their advantage. This latest action underscores the hostile business environment in Venezuela that will continue to undermine private investment in anything incorporating intellectual property.
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